LAKE COUNTY PLANNING BOARD
May 8, 2013
Lake County Courthouse, Large Conference Room (Rm 317)
Meeting Minutes

MEMBERS PRESENT: Sigurd Jensen, Steve Rosso, Roland Godan

STAFF PRESENT: Joel Nelson, Robert Costa, Lita Fonda

Steve Rosso, vice-chair called the meeting to order at 7:02 pm. A quorum was not present, so minutes were postponed to the next meeting.

AMENDED PLAT OF PORTIONS OF LOTS 5 & 6, BLOCK 10, SAFETY BAY VILLA AMENDMENT REQUESTS

Robert Costa presented the staff memorandum. (See attachments to minutes in the May 2013 meeting file for staff memorandum.)

Robert highlighted the close-up view with topographic information in the attachments for Steve. Steve checked this was the corner of the property, and that it showed where the garage was proposed. Robert explained [the topo] was submitted in January, prior to staff's request that the applicant show where they wanted the boundary line done. He included it to show the elevation contours, and could not speak to the scale on it. Roland asked about the garage size. Robert said he couldn't speak to that. They didn't receive a proposal with this request. Based on the applicable land use regulations, which were the Density Map and Regulations, those didn't require a permit. The applicant might be able to answer that question when he got a chance to speak.

Roland asked about deleting the word 'business' from the covenants. Since 'commercial' and 'industrial' were kept, were there specific definitions? Could there be elements within commercial that were business, such that deleting 'business' didn't do much? Robert noted that Janet Camel asked the same question. To a certain degree, 'business' and 'commercial' were synonymous. The subdivision approval was for a 3-lot residential subdivision. Going from the Lake County approval alone, there wouldn't be business, commercial or industrial, period, so he thought it was covered by the approval. As the applicants were proposing it, commercial purposes were still prohibited, so that would still comply with the existing approval.

Roland asked about the reasoning for the request to delete #5, which specified no house trailers or mobile homes. Was it an attempt to include them, or to eliminate the verbiage because it was covered elsewhere? Robert wasn't sure of the motive, and suggested the applicant could speak to that. Roland said he had the same question on #6 [which specified no basements, shacks or garages to be used for residential purposed and spoke about exterior finish].

Steve was curious if the covenants under scrutiny were typical or compatible with the rest of the neighborhood, and if house trailers or mobile homes were allowed on other lots or restricted, or if there were restrictions on construction or the level of construction such as described in #6.

Robert was familiar with the covenants applicable to the subject subdivision or filed by the original subdivider, but not those that others in the vicinity might have.

Stan Monger spoke on behalf of the application of him and his wife, Linda. He didn't have much to add to Robert's coverage. He mentioned Steve had viewed the site. The applicants felt this seemed like a natural location for the garage. It was relatively flat there, as shown by the topo map. After that 80 or 90 feet, it became quite steep. He felt that to hear the history of how Mary Voorhees developed and subdivided this in 1980, that she put the 40-foot non-construction area on the westernmost portion to protect the steep slope. In his view, it was unbuildable. It wasn't flat where they proposed the garage, but it was nearly flat. It seemed like a natural location to keep it away from the lakeshore and the viewsheds of the lake. They currently parked their cars there. It was close to the existing driveway and easement. He'd read the public comments and knew a neighbor's attorney questioned the 40-foot non-construction area. The attorney had indicated that perhaps it was a verbal agreement between Mary Voorhees and Dr. Evert. [He and his wife] bought one lot directly from Mary, and that was never discussed. He felt strongly that if Mary and Dr. Evert had agreed to that, it would have been part of the covenants, which had been developed at the same time for the subdivision. He thought she did it with the idea of protecting the steep slope, and it was a good idea. They had no problem with it remaining in place. They were only looking at the northernmost 80 or 82 feet.

Regarding the earlier question on the garage size, Stan explained they hadn't done the design yet, pending approval. They didn't want to get too far along until they knew it was okay to build there. They were thinking in the 2 ½ car garage range. They liked to keep it small and as unobtrusive as possible. They liked the natural products and wanted it to blend in with the environment. That was part of the reason to put it back there versus on the lakeshore. They had no intention of putting a mobile home on it. A trailer house was on the Kelly/ Evert property. He wouldn't want that on their property. He had been encouraged by the Planning office to review the covenants and make sure the covenants were okay if they were going to make a change. The idea was just to clean it up a little bit. The same went with the building material. He wasn't sure what a shack was. That was different to everyone. When they built a new cabin, they put some rust and corrugated tin on part of the porch roof. That could be construed by some as being not an appropriate building material. It was a popular way to do it now, and it looked nice and professional. The idea with the covenants was to get them more in line with the County's Density regulations and policy. He invited questions.

Roland agreed with Stan's comment on tin and gave an example. He brought up the 40-foot wide no-build area. Steve showed where the boundary line moved and the section it added to lot 2. The part of the 40-foot [no build area] on tract 3 would stay in place. Stan agreed. Looking at Robert's notes, they probably could have proposed the removal of the entire non-construction area because at the time it was developed, it wasn't a requirement of the County and apparently still wasn't. He thought it wasn't a bad thing to have it there to protect that steep slope, both for their protection and their neighbor's protection. They felt it was best just to remove it on the 82 feet where it was relatively flat.

Steve confirmed with Stan that the covenants only covered tracts 1 through 3, and that the Mongers owned all three tracts. No other owners had to be considered. He asked Stan if they

had a problem with the 15-foot setbacks. Stan replied that he probably brought that upon himself. In the original covenants, it said 15 feet from property lines perpendicular to the lake. They were on a corner, so he had asked Robert which property line was perpendicular and which was parallel. He didn't have a problem with the office's recommendation to change that wording. He wouldn't want someone building within 15 feet of his property line. It seemed reasonable. Steve commented that it looked like every property line was perpendicular to one of the shorelines. Stan agreed. The change would make the wording clearer.

Public comment opened:

Clint Fischer, a Polson attorney, spoke on behalf of the adjoining owners (the Kelly family and the Evert family) to the west of the Monger property. He noted his letter written in opposition and his supplemental letter were a part of the staff report packet. He expressed concern that the staff recommendation to change all setbacks to 15 feet in the covenants needed to be clarified to say except for the remaining portion of the 40-foot no-build zone, south of the 82-foot setback. Clint and Robert discussed this to clarify. Steve commented that the 40-foot no build area was not a setback. There could be no construction within that 40-foot wide area. Since it wasn't a property line, the construction could go right up to next to that 40-foot. There didn't need to be an additional 15 feet. Roland thought that meant [buildings would be set back] 15 feet or 40 feet, whichever was greater. The plat would dictate that. Steve said it could just say no building shall be erected within 15 feet of the side [property] lines of any lot or in the no build zone. Clint agreed with that.

Clint described some history of the purchase of 2 lots by Dr. Evert from Mary Voorhees. These adjoined the western boundary of the Monger property. He referred to the anecdotal historical perspective provided by Martha Kelly's affidavit which was attached to his letter regarding why the 40-foot no build zone was created. He thought it was the only historical perspective available since the original parties were deceased. It was an effort on the part of Mary Voorhees at the request of Dr. Evert to protect the Evert/Kelly property privacy and provide that setback on the west side. The County looked for a governmental historical reason for that no build zone and there simply wasn't one. He read from a sentence in the staff memorandum at the bottom of pg. 3 and top of pg. 4. The County speculated why the 40-foot no build zone was created but Martha Kelly provided an explanation. He thought the suggestion that it was put there to protect slopes that exceeded 25% grade missed the mark. He didn't think it was a coincidence that the 40-foot no build zone extended from the entrance on the north to the Evert/Kelly property south along the boundary of tract 3 to the lake, and included 82 feet that was buildable and practically flat. It extended from the lake to the entrance into their property to protect their view when they entered the property and to protect the boundary line. To suggest that the 40-foot zone was there to protect the property from building on slope greater than 25% didn't pass muster. The area that was proposed to be built upon today didn't need to be protected as it practically had no slope. He thought that would lend credence to Martha Kelly's affidavit. On behalf of his clients, he suggested the County respectfully should not enter into amending a plat that was created by agreement between private parties and not at the request or the requirement of a government body, rule or regulation. He didn't believe that the County should remove it and create issues between private property owners.

Roland commented that the covenants were an issue between the developer and/or original owner and the subsequent buyer and future owners. There wasn't a connection between that and the neighbors unless they were a part of that subdivision. Roland and Clint agreed that the covenants on the Monger property applied to that property only. Clint said the party that owned the property went to the effort of placing the no-build zone on the subdivision plat. It was a matter of record, as were the covenants, for subsequent owners to see. He referred to the Monger's property deed, which stated they took title subject to existing restrictions. Clint thought that both [original] parties thought that a no/ restriction zone on the certificate of survey that was accepted by the County and placed of record would be of record, binding and run with the land. One of his purposes tonight was to see that 50 years from now, the property owners weren't before the Board again wondering what was done and why because the record wasn't clear. Roland said if this covenant was lifted, circumstances might change 50 years from now. The people here tonight would be dead and it would be back for a decision again. Restrictions and covenants changed all the time. Once they were written, they weren't forever. There was room for discussion and change as circumstances changed. Clint said the Evert/ Kelly circumstances hadn't changed.

Steve clarified that the discussion of the 40-foot no-build zone was on the plat rather than in the covenants. Clint said they had no objection to the requested amendment of covenants. They objected to the request to amend the plat by removing that portion of the no-build zone. Steve referred to Clint's correspondence, where he suggested his clients were concerned about their views and privacy and peaceful enjoyment and such. When Steve looked at the property line, there appeared to be a ridge or hill along it. He couldn't see development on the Evert/Kelly property. Clint said there was a trailer house there. [His clients] owned 3 lots in a row. Two were purchased from Mary Voorhees. They didn't have permanent residences on that. Steve asked if they could see the garage from their developed areas if the garage was built in that flat spot. Clint didn't know. Where you would drive into the proposed garage location, the roadway turned to the west and entered his clients' property. The garage would be there, where there is currently open space and a 40-foot no build zone. Steve checked with Clint that when they drove down the driveway to approach the property, they could see the house and other homes. They saw quite a bit of development.

Clint said it was his clients' position to oppose the application regarding the no-build area because they felt it affected their property rights, which per Martha Kelly's testimony in her affidavit had been protected by the 40-foot strip placed upon Mary Voorhees subdivision plat. In the event the Board chose to grant the opposed application, he thought there should be some finality to the process so that they weren't back here again in the future. The application should be granted with conditions that would protect the property into the future. The conditions were that the garage would be built in the location indicated on the topographic map, the major trees on the topographic map would be saved, the garage wouldn't have running water or sewage capacity/facilities, the garage doors would face the south or southeast instead of the north or west, which would be visible to his clients when they approached their property, and that it be made a matter of record that the remaining portion of the 40-foot no-build zone (the western 40 feet of the new tract 3) would forever have that 40-foot no-build zone. The record would be clear and this application would be granted with specific conditions that would be of record, complied with and would run with the land. There would be no expansion of the facility in the

future or use or occupancy or anything else. Once it was granted with conditions, that would be it and it would be permanent.

Roland commented that the first 3 items on the affidavit were tangible. The fourth item was making a statement of the intent of the setback, which appeared to him to be an opinion. What was its place in an affidavit of fact? Clint thought she could base her opinion in an affidavit; affidavits weren't merely recitations of facts. Roland and Clint discussed this further. Roland thought that the enjoyment of privacy in this case was at the expense of non-usage of an adjoining parcel's property. It might be a different issue if the garage was proposed within a setback. It turned into a 50-50 thing of which interests were a driving factor. Clint responded that it was the Kellys' property that had the certificate of survey that indicated on its face and was recorded in a public office that there was a 40-foot no-build zone. That wasn't the issue here. It was the Monger property, and they were the ones who were processing an application. Roland thought there was some degree of the benefit of the doubt going to the owners of the property being able to utilize the property to the best of their interests within their restrictions of covenants. Clint thought it was odd that Mary Voorhees would place a restriction on her own property to protect her own property. She owned the whole thing. If it wasn't to benefit a neighbor, she wouldn't have had to put it on at all. You don't need to grant yourself an easement or give yourself a building restriction. In his opinion, to put a restriction on your own property to protect your own property didn't make sense. It only made sense in the context of the affidavit.

Public comment closed.

Steve said this property just went through a boundary line adjustment. That was done by the property owners without a lot of input from the community. Joel and Robert noted the boundary line adjustment hadn't been completed. Robert noted that it had been approved but not filed. Steve continued that there had been several cases in the last few years where restrictions had been lifted or applied to properties. It was an ongoing kind of thing. These plats were sort of living representations of our land and property. Boundary lines changed, restrictions changed, uses changed, zoning changed. From what he could tell, the privacy issue was fairly weak. When you were in this location, you couldn't see development on the neighboring properties to the west. Although it was nice to have a nice country wildlife kind of drive to your house when you were going by your neighbors, he didn't know that they were in a position in this country to restrict what neighbors could do on their property just because when you drove to your property, you didn't want to see the development. He was leaning towards granting the request to lift the no-build area.

Sigurd asked if the proposed location seemed like a logical place for a garage. Steve thought it did. If they were to build the garage farther down the driveway, a lot more driveway would have to be plowed and a lot more work done to access the garage in the wintertime. It made sense to him to have the garage close to the entry of that property. It seemed to be a reasonably buildable area. Whether it was restricted before, and whether or not they knew for a fact what the reasons were, he didn't see that those restrictions applied any longer. If the owner of the property didn't feel like the restriction was needed anymore, it was mostly up to the property owner to decide whether or not he wanted to lift those restrictions as long as it didn't affect the health and safety

and other issues for which the County was responsible for protecting. Sigurd said his opinion was similar.

Roland observe if the garage were rotated about 20 degrees and slid down, the garage could be outside the no-build zone. What led to the decision to propose the garage where it was proposed? Stan described some big trees and showed their locations and where the road would have to go. You would be in the middle of the yard if you went that way. They also had drainfield down below here and he didn't know if that would then be an issue. It would be very difficult without losing several really nice, big trees. Additionally, the garage doors would have to face to the west to access it. Roland said that in the event this wasn't granted, if they were going to build the garage anyway, rotating it and taking the trees out would probably be what to do. Stan responded no. He didn't know that they would build there. He hated losing trees. Roland said that if the trees were taken out of the equation, ultimately a dwelling might end up in that line-of-site visual approach anyway. Someone might not be so fond of trees. Stan explained that by doing that, you would have to change the entire driveway and the yard. The topographic map here didn't show it very well. He confirmed with Robert that he'd sent Robert a topo that showed the big picture. Robert said this topo was an excerpt of that one.

Joel confirmed with Steve that he visited the property today. For disclosure purposes, Joel asked if there were ex parte' communications that anybody wanted to disclose. Steve described that they just said hello. They didn't discuss the issue at all. Steve drove down to get a look at the property and Stan walked up, wondering who he was. They said hello and introduced themselves. They didn't have discussion of the issues.

Motion made by Steve Rosso, and seconded by Sigurd Jensen, to recommend approval of the applicants' request with staff recommendations, including the additional condition for the 15-foot setback on all property lines and having that in the covenants. Motion carried, all in favor.

Joel reiterated that the Board made a recommendation to the Commissioners. Steve noted the Commissioners would reevaluate this and make a decision.

<u>OTHER BUSINESS</u> (8:02 pm)
Joel mentioned a vacancy on Board of Adjustment. Robert gave an update on the Upper West Shore proposed amendment that was at last month's meeting, and reported on the action taken by the Lake County Commissioners. Discussion occurred on wording from that item pertaining to the provision of names and addresses. Currently items for next month looked unlikely; there was another week until the deadline for items was reached.

Motion made by Sigurd Jensen, and seconded by Roland Godan, to adjourn. Motion carried, all in favor. Meeting adjourned at 8:12 pm.